



LEGAL BUREAU BULLETIN

Vol. 44, No. 2

January 2014

- I. **SUBJECT:** EXCEPTIONS TO THE PAYTON RULE AGAINST ARRESTING A SUSPECT IN HIS HOME WITHOUT AN ARREST WARRANT
- II. **QUESTION:** ARE THERE ANY EXCEPTIONS TO THE PAYTON RULE AGAINST ARRESTING A SUSPECT IN HIS HOME WITHOUT AN ARREST WARRANT?
- III. **ANSWER:** YES. OFFICERS MAY ARREST A SUSPECT IN HIS HOME WITHOUT AN ARREST WARRANT WHERE (1) OFFICERS FACE AN EXIGENCY, (2) OFFICERS HAVE CONSENT TO ENTER THE HOME, OR (3) OFFICERS ARE IN HOT PURSUIT OF A FLEEING SUSPECT.

IV. DISCUSSION

A. Introduction

As a general rule, police officers may not arrest a suspect in his home without first securing an arrest warrant, even where the police have probable cause to arrest the suspect. This principle is known as the Payton rule.¹ However, there are several exceptions to the Payton rule. Where an exception applies, officers need not obtain an arrest warrant before entering a private residence to make an arrest. The purpose of this bulletin is to provide a review of existing New York law on these exceptions.

B. Exception 1: Exigent Circumstances

One exception to the Payton rule is exigent circumstances. Officers may make a warrantless in-home arrest where there is an exigency that excuses their failure to obtain an arrest warrant.

When determining whether they face an exigency, officers should primarily assess whether they are confronted by an urgent need to render aid or take action. Case law provides the following factors for officers to consider when determining whether there is in fact an urgent need to take action:

- The gravity or violent nature of the offense for which the suspect is to be charged,
- Whether the suspect is reasonably believed to be armed,
- Whether there is a clear showing of probable cause to believe that the suspect committed the crime,

¹ For a complete discussion of the Payton rule, reference Legal Bureau Bulletin, Volume 43, Number 5. This bulletin is intended to supplement that issue.

- Whether there is strong reason to believe that the suspect is in the premises to be entered, and
- The likelihood that the suspect will escape if not quickly apprehended.

Officers need not find that all of these factors are present before concluding that they face exigent circumstances. For example, the New York State Court of Appeals held that police were justified in entering a suspect's hotel room without a warrant – even in the absence of apparent flight – because the suspect had recently committed a murder and had prior gun arrests. The court explained that – despite the lack of evidence that the suspect would flee – the description, location, and seriousness of the crime, and the suspect's apparent dangerousness, together created exigent circumstances.

On the other hand, the presence of only one of these factors most often does not constitute exigent circumstances. For example, one New York court declined to apply the doctrine of exigent circumstances where police entered the home of an individual suspected of burglarizing an apartment without an arrest warrant. The court explained that although burglary involving a dwelling is classified as a violent offense, there was no evidence that:

- any delay in obtaining a warrant would pose a danger to the arresting officers or the community,
- the suspect was armed, or
- the suspect would escape if not swiftly apprehended.

It should be noted that where there is a significant delay between the discovery of the alleged exigent circumstances and a warrantless in-home arrest of a suspect, officers cannot later claim that exigent circumstances excused their failure to first obtain an arrest warrant. In these circumstances, New York courts look skeptically upon officers' allegations of exigent circumstances. For example, one court rejected the officers' claim of exigent circumstances where they made a warrantless in-home arrest three hours after a witness identified the suspect's residence and warned officers that the suspect was armed.

C. Exception 2: Consent

A second exception to the Payton rule against warrantless in-home arrests is consent. Under this exception, officers may enter a private residence to make an arrest where they have valid consent to enter. Consent is valid where:

- the means by which officers seek consent to enter are not coercive,
- the words or conduct of the person from whom officers seek consent suggest that such consent is given voluntarily, and
- consent is obtained from someone who has the authority to consent to police entry.

Each of these concepts is discussed in turn below.

i. Obtaining Voluntary Consent

A person consents voluntarily to police entry where his consent is not the product of police coercion. Thus, police may not use overwhelming official pressure to force the person to permit the police to enter. A person has not consented where his consent was nothing more than acquiescence to police authority.

The same standard applies where officers seek entry into a suspect's home through the use of a ruse or deception. In other words, officers may only employ a ruse to seek entry if the ruse is non-coercive. This is because the use of coercion when employing deceptive means negates the voluntariness of a person's consent. Thus, police may not falsely represent facts such that a person would feel compelled to yield to their apparent authority to enter.²

ii. Manifesting Consent

Whether a person has given voluntary consent depends on the way in which the person gave consent. The manner in which a person gives consent must lead a reasonable officer to conclude that consent was given voluntarily. For example, a person gives voluntary consent where, in response to a non-coercive request by officers to enter, they expressly tell officers that they are permitted to enter.

A more challenging scenario is where a person gives consent impliedly, or through conduct. An officer facing this situation must, again, determine whether the person's conduct indicates that his consent is voluntary. Below are examples of implied consent that New York courts have held would lead a reasonable officer to conclude that consent was given voluntarily:

- Waving an officer into the home upon a request to enter;
- Stepping aside from the door to admit the officers;
- Opening a door, leaving it wide open, and then walking away;
- Engaging in a discussion with an officer inside the apartment, complying with the officer's request for identification without hesitation, and failing to raise any objection to the officer's entry or continued presence; and
- Telling the police that the individual for whom the police have probable cause to arrest is in his bedroom, and pointing to his bedroom.

iii. Authority to Consent

The person from whom officers obtain consent to enter must have actual authority to consent to police entry. A suspect has actual authority to consent to police entry into his own home. In addition, officers may obtain consent to enter from a third party, as long as the person from whom consent is sought has:

- Common authority over the premises, or
- Some other sufficient relationship to the premises.

Applying this principle of third-party consent, New York courts have found the following associates of a suspect to have sufficient authority to consent to police entry:

- A spouse,
- Parents,
- Children,

² For specific examples of ruses that New York courts have deemed acceptable and those they have deemed unacceptable, reference Legal Bureau Bulletin, Volume 43, Number 5.

- Siblings,
- Other relatives, such as an aunt or uncle, or grandparent,
- A fiancé or boyfriend/girlfriend residing with the suspect, and
- Co-occupants.

Ultimately, officers must have a reasonable, good faith belief that the person from whom consent to enter is sought had actual authority to permit entry. When officers face a situation that causes them to question the consenting party's power or control over the premises to be entered, they *must* make some inquiry into the consenting party's authority before proceeding into a suspect's home. Otherwise, any evidence obtained as a result of the warrantless entry will be subject to suppression.

D. Exception 3: Hot Pursuit

A third exception to the Payton rule is hot pursuit. Hot pursuit describes the situation in which the police are pursuing a suspect who is in the process of fleeing from a recently committed crime. As long as officers have probable cause to believe the suspect has committed a crime, they may pursue the suspect as he flees into a private location.

Police may enter a fleeing suspect's own home to make a warrantless arrest. This is because a person may not attempt to avoid an arrest simply by escaping into his own home. In addition, police may pursue a fleeing suspect who steps into the threshold, or doorway, of his home, and then flees back into his home.³

V. Conclusion

Officers who do not have an arrest warrant should only enter a private residence where one of these exceptions to the Payton rule applies. If they conclude that one of these exceptions does, in fact, apply, they should be prepared to articulate the specific facts supporting their conclusion that an exception applies.

Any questions about the above-discussed principles should be directed to the Legal Bureau at (646) 610-5400.

This bulletin was prepared by
Katherine Byrns, Law Fellow, Legal Bureau

³ As explained in Legal Bureau Bulletin, Volume 43, Number 5, the Payton rule does not apply at the threshold of a person's home. In other words, a suspect may be arrested in the threshold of his home even where police do not have an arrest warrant.